IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM J. SESKO and NATACHA SESKO, husband and wife, Appellants, v. THE CITY OF BREMERTON, a Municipal Corporation, Respondent.	No. 35342-3-II UNPUBLISHED OPINION

Hunt, J. — The late William[1] and Natacha Sesko appeal the trial court's dismissal of their petition to remove the City of Bremerton's abatement-cost lien on their property. The trial court ruled that the three houses on the Seskos' property were dangerous "structures" within the meaning of RCW 35.80.030 and, therefore, subject to demolition by Bremerton at the Seskos' expense when the Seskos failed to complete the demolition themselves. The Seskos argue that their property was not subject to the lien because two of the houses were not "structures" under the statute. Bremerton responds that RCW 35.80.030(2) bars the Seskos' petition as untimely. We affirm the trial court's dismissal of the Seskos' petition.

[1] Although there has been no formal notice from the parties, we believe that William Sesko is now deceased.

FACTS

I. Demolition of Dangerous Buildings

William and Natacha Sesko owned property in Bremerton, on which three houses were located. One house was affixed to the property; the other two houses remained on cribs after the Seskos moved them from other locations. Two of the houses were owned by someone else. All three houses had broken windows. Inspectors considered the houses to be fire hazards.[2]

On March 29, 1995, the City of Bremerton issued a "Notice of Dangerous Building" to the Seskos for the three houses. On April 11, Bremerton served the Seskos with a Notice of Abatement, which gave the Seskos a chance to obtain permits to repair or to demolish the three "structures" by April 30 and to complete the work by May 31.[3]

On April 28, the Seskos appealed the Notice of Abatement to the Building and Fire Code Board of Appeals (Appeals Board). The Appeals Board conducted a hearing, which William Sesko attended. Finding that the houses were "dangerous buildings," the Appeals Board entered its findings and order affirming the Notice of Abatement on May 10.[4] The Seskos did not further

---

[2] For example, the front portion of one house was partially collapsed, and its floor and roof were caved in.

[3] According to Janet Lunceford, a Bremerton building department employee, "The abatement orders gave Mr. Sesko a chance to obtain permits for the repair or demolition of the structures by April 30th with all the work to be completed by May 31st, 1995." Exhibit 3 at 6.

[4] The Appeals Board also ordered Bremerton to refrain from taking abatement action against the houses on the Seskos' property until two days after the Seskos received notice of the Planning Commission's separate determination of whether the Seskos' use of the property as a junkyard was legal. On June 20, the Planning Commission determined that the Seskos' use of their property as a junkyard was illegal. The record does not show that Seskos appealed or further challenged this determination.

challenge the Notice of Abatement or the Appeals Board's "dangerous buildings" designation by filing a petition under RCW 35.80.030 within 30 days.

On July 3, the Seskos received a letter from the Appeals Board telling them they had two days to apply for a permit to demolish the white house. On July 5, the Seskos applied for and received a permit for demolition of the houses, to be completed by August 1, 1995. The Seskos partially demolished two of the houses on their property, but as of August 1, they had not completed the demolition. On August 18, Bremerton informed the Seskos that, because they had failed to complete the demolition, it would assume abatement of the three houses.

On September 15, the Seskos petitioned the superior court to enjoin Bremerton from completing the abatement. The record does not show that the Seskos challenged the "dangerous building" designation in their petition. The trial court denied the Seskos' request for a restraining order. The Seskos did not appeal.

Bremerton proceeded with the abatement, beginning the demolition work on October 26. Bremerton completed demolition and removal of the three dangerous buildings and related debris from the Seskos' property on November 16.

II. Lien on Seskos' PROPERTY FOR Abatement Costs

On February 7, 1996, Bremerton served the Seskos with a Notice of Public Hearing on its request to file a lien on their property to recover the demolition and abatement costs. On February 21, the Bremerton City Council held a hearing to determine whether to file a lien on the Seskos' property for reimbursement of Bremerton's abatement expenses. On the day of the hearing, the Seskos filed objections to the lien, arguing that only half of one of the three

demolished houses, the white one, had been situated on their property and that the other half had been situated in the adjacent alley that Bremerton owned.

The parties later agreed that the $18,707.20 lien was reasonable. On February 27, Bremerton filed a lien for that amount on the Seksos' property.

A. Petition to Remove Lien

On March 29, the Seskos filed a "Petition to Remove Lien" in Kitsap County Superior Court. The Seskos claimed that the lien should be removed because (1) the demolished white house had rested partly in the adjoining alley, and (2) two of the houses on the Seskos' property were owned by someone else. While their petition to remove the lien was pending, the Seskos' lien was paid off from proceeds from the sale of their property, and the lien was removed.

Bremerton moved to dismiss the Seskos' petition as moot because the lien had been satisfied and removed. The Seskos moved to amend their petition, asserting that the lien should be reduced. Concluding that reduction of the removed lien was moot, the trial court denied the Seskos' motion to amend and dismissed their Petition to Remove Lien.

B. Appeal and Remand

The Seskos appealed. On November 2, 1999, we ruled that the trial court had erroneously denied the Seskos' motion to amend because their request for reduction of the lien did not add a new cause of action or change the issues in their petition to remove the lien. We remanded to the trial court. On March 29, 2001, the trial court allowed the Seskos to amend their complaint to add their claim for reduction of the lien amount.

In their trial brief, the Seskos argued, for the first time, that two of the demolished houses

had not been "structures" under RCW 35.80. In its trial brief, Bremerton responded that the Seskos had not timely pursued the "dangerous structure" issue, which, therefore, they had abandoned and could not raise in their trial brief. The trial court did not, however, address Bremerton's argument that the Seskos had waited too long to raise the issue of what constituted a "dangerous structure."

On July 18, 2006, the trial court ruled that (1) although two of the Seskos' houses had not been permanently attached to their property, nevertheless they were "structures" within the meaning of RCW 35.80.040, subject to demolition by Bremerton when the Seskos failed to complete the abatement; and (2) Bremerton's lien had properly attached to the Seskos' property.[5] The trial court dismissed the Seskos' amended petition.

C. Second Appeal, After Remand

The Seskos now appeal the trial court's dismissal of their amended petition to reduce the lien amount.

ANALYSIS

At the outset, Bremerton argues that the RCW 35.80.030(2) "statute of limitations" bars the Seskos' appeal. Bremerton asserts that the Seskos failed to file a petition, challenging the Appeals Board's May 1995 decision that the three houses on their property were "dangerous

[5] In their trial brief, the Seskos also argued that the lien amount should be reduced because (1) someone else owned two of the houses on the Seskos' property, and (2) one house was partially located in the alley. The trial court denied the Seskos' request to reduce the lien on these based because (1) the Seskos, as owners of the land, were responsible for eliminating the danger posed by the houses on their land, and (2) the Seskos owned the disputed alley property on which one of the houses was partially located. We do not address these rulings because the Seskos did not appeal them.

buildings," within 30 days of the Appeals Board's posting and service of the order, as RCW 35.80 requires. Although we disagree technically with Bremerton's characterization of RCW 35.80.030(2) as a "statute of limitations,"[6] we do agree that the Seskos' failure to challenge the Appeals Board's "dangerous building" designation within the statutorily required 30 days from the posting and service of the Appeals Board's decision barred them from mounting this challenge at a later time.

Asserting that the 30-day period began to run when the Appeals Board entered its order on May 10, 1995, Bremerton argues that (1) RCW 35.80.030(2) required the Seskos to have filed their petition for an injunction by June 9, 1995; and (2) the Seskos' March 29, 1996 petition to remove the abatement-cost lien, challenging the "dangerous buildings" designation for the first time, was more than nine months too late. The Seskos do not respond to Bremerton's timeliness argument.

I. RCW 35.80.030(2)

Before we address the Seskos' substantive arguments, we must decide whether the Seskos complied with RCW 35.80.030(2) time requirements and, if they did not, the effect of this failure. We review such questions of law de novo. *Bennett v. Computer Task Group, Inc.*, 112 Wn. App. 102, 106, 47 P.3d 594 (2002).

RCW 35.80.030(2) provides:

Any person affected by an order issued by the appeals commission pursuant to

[6] The Legislature has not characterized RCW 35.80.030(2) as a statute of limitations. Rather, it is a statutory limit on when an aggrieved party must file a petition for an injunction to restrain a public entity from carrying out an Appeals Board order. Such a petition must be filed within 30 days after the Appeals Board posts and serves its order.

> subsection (1)(g) of this section may, *within thirty days after the posting and service of the order,* petition to the superior court for an injunction restraining the public officer or members of the board from carrying out the provisions of the order. In all such proceedings the court is authorized to affirm, reverse, or modify the order and such trial shall be heard de novo.

(Emphasis added.)

In this appeal, the only issue the Seskos raise is whether the demolished houses were "buildings or "structures" within the meaning of RCW 35.85. On May 10, 1995, the Appeals Board issued its order finding that the three houses on the Seskos' property were "dangerous buildings" and, therefore, subject to abatement. The Seskos did not file a petition challenging this determination within 30 days. Instead, the Seskos applied for a permit and began to demolish two of the houses. The Appeals Board's "dangerous building" designation remained in force and unchallenged.

After the Seskos failed to complete the demolition themselves, Bremerton stepped in to take over the abatement. Only then, on September 15, 1995, did the Seskos file a petition in superior court to enjoin Bremerton's abatement of the houses. Still, the Seskos did not challenge the Appeals Board "dangerous building" designation in their injunction petition.[7] The trial court denied their injunction petition. The Seskos did not appeal. And the Appeals Board's "dangerous building" designation remained in force and unchallenged.

The Seskos did not even challenge this designation when they filed a petition to remove Bremerton's cost-abatement line in 1996. Nor did they raise the "dangerous building" or "structure" issue in their first appeal from the trial court's denial of their petition to remove the

[7] The record before us on appeal does not show that the Seskos even challenged this "dangerous building" designation in their later petition to enjoin Bremerton from enforcing the abatement-cost lien, which is the subject of this appeal.

lien. Thus, the Appeals Board's "dangerous building" designation remained in force and unchallenged for several years.

It was not until 2001 that the Seskos argued for the first time, in their trial brief on remand, that two of the demolished houses had not been "structures" subject to abatement under RCW 35.80. This challenge came too late. If the Seskos wanted to challenge the Appeals Board's "dangerous buildings" designation and its order affirming the Notice of Abatement, RCW 35.80.030(2)[8] required them to file a petition within 30 days of the posting and service of that order. This the Seskos failed to do.

Although the Seskos challenged the Appeal Board's order in their 2001 trial brief on remand of their "Petition to Remove Lien," they did not include such a challenge in their September 15, 1995 petition to enjoin Bremerton's taking over the abatement from them. Furthermore, even that petition was filed more than 30 days after the May 10, 1995 Appeals Board order.

The doctrine of res judicata bars issues that could have been, but were not, litigated in a prior action. *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995). Res judicata bars the Seskos from challenging the Appeal Board's order six years later on remand when they could have raised this challenge in a timely injunction petition in 1995. Because RCW 35.80.030(2) and res judicata require that the Seskos challenge the Appeal Board's order in an injunction petition filed within 30 days of the posting and service of that order, the Seskos are

[8] Under RCW 35.80.030(2), a person does not have to file an injunction petition. But, if a person wants to challenge the Appeals Board's order, they must file a "petition to the superior court for an injunction" within thirty days of the posting and service of the order. RCW 35.80.030(2).

now barred from challenging the Appeals Board's designation of their houses as "dangerous buildings." Accordingly, the Appeals Board's determinations have become final and binding on the Seskos and, therefore, we do not further address the Seskos' arguments that these designations were erroneous.

II. Trial Court Ruling

We may affirm the trial court on any ground the record supports, even though it did not consider that ground.[9] *State v. Michiellli*, 132 Wn.2d 229, 242-43, 937 P.2d 587 (1997). Thus, we hold that the Seskos' challenge was foreclosed by their failure to file a timely petition under RCW 35.80.030 from the Appeals Board's "dangerous buildings" designation and, therefore, the trial court properly dismissed the Seskos' petition.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Armstrong, P.J.

Quinn-Brintnall, J.

[9] Because the Seskos were barred from asserting that the houses were not "dangerous structures" subject to abatement, the trial court did not need to address the merits of the Seskos' RCW 35.90.030 argument.